



Agenda Date: 10/6/21
Agenda Item: 2A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

ANGELO SCIOVE)	ORDER ADOPTING INITIAL DECISION
Petitioner)	
)	
v.)	
)	
PUBLIC SERVICE ELECTRIC AND GAS COMPANY)	BPU DOCKET NO. EC20100676
Respondent)	OAL DOCKET NO. PUC 01436-2021S

Parties of Record:

Angelo Sciove, Petitioner, *Pro Se*
Matthew Weissman, Esq., for Respondent, Public Service Electric and Gas Company

BY THE BOARD:

The within matter is a dispute between Angelo Sciove (“Petitioner”) and Public Service Electric and Gas Company (“PSE&G” or “Respondent”). This Order sets forth the background and procedural history of Petitioner’s claims and represents the final decision in the matter pursuant to N.J.S.A. 52:14B-10(c). Having reviewed the record, the New Jersey Board of Public Utilities (“Board”) now considers the Initial Decision rendered on July 21, 2021.

BACKGROUND AND PROCEDURAL HISTORY

On October 22, 2020, Petitioner filed the instant matter with the Board seeking damages resulting from the alleged damage of the Petitioner’s sewer line during a gas main replacement project performed by PSE&G’s contractors in 2016 (“Petition”).

According to the Petition, in November 2019, Petitioner noticed flooding in his building and contacted a plumbing contractor who determined that there was damage on the main sewer line. Following this determination, the necessary repair work was undertaken and completed in December 2019.

Petitioner contended that no other contractors performed work in the area or filed permits to perform work other than PSE&G contractors, J Fletcher Creamer and Son, Inc. and Joseph M. Sanzari, Inc., in 2016. According to Petitioner, PSE&G’s contractors damaged the sewer line and failed to make proper repairs. As a result of the damaged sewer line and the necessary repair work, Petitioner claimed that he incurred damages totaling \$29,771.35.

On February 2, 2021, PSE&G filed its answer to the Petition (“Answer”). In its Answer, PSE&G argued that neither the Board nor the Office of Administrative Law (“OAL”) have legal authority to award damages. Therefore, PSE&G requested that the relief sought by the Petitioner be denied and that the Petition be dismissed.

On February 5, 2021, the matter was transmitted to the OAL for hearing as a contested case, where it was assigned to Administrative Law Judge (“ALJ”) Judith Lieberman.

A status conference was conducted on May 3, 2021, where it was determined that Petitioner would respond to PSE&G’s motion to dismiss by May 17, 2021. In addition, discovery would not commence until after an Order on the motion was issued. Petitioner submitted a packet of materials that constituted the production of discovery and the record was closed on May 17, 2021.

INITIAL DECISION

On July 21, 2021, ALJ Lieberman issued an Initial Decision in this matter. ALJ Lieberman stated that “[t]his matter is not a billing dispute” and that “Petitioner has not made any allegation about the accuracy of the bills rendered to him by PSE&G.” Initial Decision at 2.

As noted by ALJ Lieberman, pursuant to the New Jersey Court Rules, a motion to dismiss may be filed “...when a party has f[a]iled to state a claim upon which relief can be granted.” Id. at 3. The burden of proof in filing a motion to dismiss lies with the party seeking the motion. Such a motion is to be granted with great caution. Ibid.

ALJ Lieberman stated that “[p]ursuant to N.J.S.A. 52:14B-1 -15, the OAL derives its authority from the transmitting agencies. In this matter, therefore, jurisdiction over a claim flows from the transmitting agency, the BPU. As a matter of law, the Board is not a court of general jurisdiction and lacks jurisdiction to award damages as sought by the [P]etitioner.” Ibid.

Citing In re the Petition of David and Elizabeth Nikel v. Public Service Electric and Gas Co., Docket No. EC02040250, 2002 N.J. PUC LEXIS 357 (November 19, 2002), the ALJ noted that “...the Board stated that “[i]n prior matters, the Board has not exercised jurisdiction as to damages. The Board likewise will not exercise jurisdiction over damages at this time in this matter.” Id. at 4. The ALJ also cited Muise v. GPU, Inc., 332 N.J. Super 140, 165 (App. Div. 2000), wherein the Appellate Division stated “Indeed, the Board lack[s] authority to consider the remedy of damages at all.” Ibid.

In this matter, Petitioner seeks damages for the expenses he allegedly incurred in response to the actions of PSE&G and its contractors. ALJ Lieberman stated that “[b]ecause [P]etitioner seeks money damages, I CONCLUDE that his complaint must be dismissed as a matter of law. Petitioner may, of course, pursue any other remedies he may be entitled to as a matter of law in the appropriate forum.” Id. at 5.

Accordingly, ALJ Lieberman granted PSE&G’s motion and dismissed the Petition. Ibid.

DISCUSSION AND FINDINGS

After review of the record in this matter, including the Initial Decision, the Board **HEREBY AFFIRMS** ALJ Lieberman’s finding that the relief requested by Petitioner is unrelated to billing, but rather, Petitioner seeks damages related to work performed by PSE&G’s contractors.

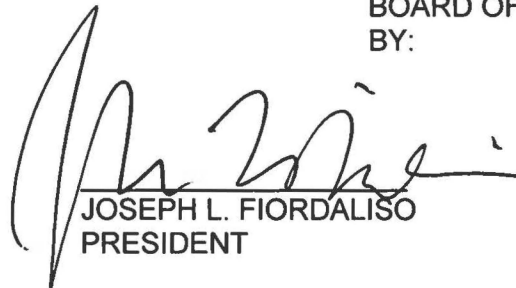
Additionally, the Board **CONCURS** with ALJ Lieberman's conclusion that the Board lacks jurisdiction to award damages in this matter, and that such conclusion is consistent with historical precedent.

The Board **HEREBY FINDS** the findings of fact and conclusions of law set forth by ALJ Lieberman to be reasonable and supported by law and **HEREBY ACCEPTS** those findings. Accordingly, the Board **HEREBY ADOPTS** the Initial Decision in its entirety and **ORDERS** that the Petition be **DISMISSED**.

This Order shall be effective on October 13, 2021.

DATED: 10/6/21

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST: 
AIDA CAMACHO-WELCH
SECRETARY

IN THE MATTER OF ANGELO SCIOVE, PETITIONER V. PUBLIC SERVICE ELECTRIC AND
GAS COMPANY, RESPONDENT

BPU DOCKET NO. EC20100676
OAL DOCKET NO. PUC 01436-2021S

SERVICE LIST

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

ON MOTION TO DISMISS

OAL DKT. NO. PUC 01436-21

AGENCY DKT. NO. EC20100676

ANGELO SCIOVE,

Petitioner,

v.

**PUBLIC SERVICE ELECTRIC
AND GAS COMPANY,**

Respondent.

Angelo Sciove, petitioner, pro se

Matthew M. Weismann, Esq., for respondent

Record Closed: May 17, 2021

Decided: July 21, 2021

BEFORE **JUDITH LIEBERMAN, ALJ:**

STATEMENT OF THE CASE

Petitioner, Angelo Sciove, appeals the denial of his request for reimbursement or credit and seeks damages from respondent, Public Service Electric and Gas (PSEG) for expenses incurred when contractors retained by respondent caused damage to a sewer line and failed to make appropriate repairs. Respondent moved to dismiss petitioner's

appeal, arguing that neither the Board of Public Utilities (Board or BPU) nor the Office of Administrative Law (OAL) has legal authority to award damages.

PROCEDURAL HISTORY

On or about October 22, 2020, petitioner filed an appeal with the New Jersey Board of Public Utilities (Board). Respondent filed an Answer on or about February 2, 2021. In it, it seeks dismissal of the appeal, based on the absence of legal authority for the award of damages. The Board transmitted the matter to the Office of Administrative Law, where it was filed on February 5, 2021. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

A status conference was conducted on May 3, 2021. At that time, it was determined that petitioner would respond to respondent's motion to dismiss by May 17, 2021. Discovery would not commence until after an Order on the motion is issued. Petitioner submitted a packet of materials that constituted the production of discovery. The record closed May 17, 2021.

FACTUAL DISCUSSION

The following is not disputed:

This matter is not a billing dispute. Petitioner has not made any allegation about the accuracy of the bills rendered to him by PSEG. Rather, filed his appeal against respondent and two private entities that he asserted were respondent's contractors, J. Fletcher Creamer and Son, Inc., and Joseph M. Sanzari, Inc. October 8, 2020, Petition at 1. He asserts that his petition contains a "full explanation of events that occurred, damage that was assessed and compensation that [he is] seeking. Ibid.

Petitioner alleged that, while performing work for respondent, the contractors caused damage to a sewer line and failed to make necessary repairs. These acts and omissions caused damage to property owned by petitioner. He claims that he hired contractors to make the necessary repairs and that, in conjunction with the repair work,

he was required to incur multiple costs, including costs associated with relocating tenants who resided at the affected property. Through his appeal, he seeks compensation for costs he incurred:

- Contractor costs and taxes: \$24,866.34
- Blacktop/road repair (asphalt): \$1,650
- Police costs for street closure: \$2,238
- Hotel costs: \$ 477.47
- Roto Rooter costs: \$314.54
- Permits/bonds: \$225

Total compensation sought: \$29,771.35.

[Id. at 2.]

LEGAL ANALYSIS AND CONCLUSION

New Jersey Court Rule 4:6-2(e) authorizes filing of motions to dismiss when a party has failed to state a claim upon which relief can be granted. "A motion to dismiss for failure to state a claim under R. 4:6-2(e) is granted with great caution." Russo v. Nagel, 358 N.J. Super. 254, 262 (App. Div. 2003).

Respondent contends in its motion that the Board and OAL do not have jurisdiction to award the relief sought by petitioner. The authority of an administrative agency such as the OAL is either expressly granted or necessarily implied by statute. See New Jersey Guild of Hearing Aid Dispensers v. Long, 75 N.J. 544, 562-63 (1978). Pursuant to N.J.S.A. 52:14B-1-15, the OAL derives its authority from the transmitting agencies. In this matter, therefore, jurisdiction over a claim flows from the transmitting agency, the BPU.

As a matter of law, the Board is not a court of general jurisdiction and lacks jurisdiction to award damages as sought by the petitioner. In In re the Petition of David and Elizabeth Nikel v. Public Service Electric and Gas Co., Dkt. No. EC02040250, 2002

N.J. PUC LEXIS 357 (November 19, 2002) (citations omitted), a case where the petitioners sought monetary damages due to the respondent's tree-trimming activities, the Board stated that "[i]n prior matters, the Board has not exercised jurisdiction as to damages. The Board likewise will not exercise jurisdiction over damages at this time in this matter." See also Muise v. GPU, Inc., 332 N.J. Super. 140, 165 (App. Div. 2000) ("Indeed, the Board lack[s] authority to consider the remedy of damages at all.")

In Integrated Telephone Services v. Bell Atlantic New Jersey, PUC 5737-97, Initial Decision (December 29, 1999) <<http://lawlibrary.rutgers.edu/oal/search.shtml>>, ALJ Mumtaz Bari-Brown summarized the law regarding the Board's power to award damages as follows:

The assertion . . . that the BPU has implied incidental jurisdiction over claims involving money damages is misplaced. The BPU has general supervisory, regulatory and jurisdictional power and control over all public utilities and their assets. N.J.S.A. 48:2-13. This sweeping grant of power includes all incidental powers needed to fulfill the statutory mandate. In re Valley Road Sewerage Co., 154 N.J. 224, 235 (1998). However, there is no express statutory authority permitting the BPU to award money damages. Moreover, the BPU has taken the long-standing position that it lacks the authority to award money damages. Slowinski v. City of Trenton, 92 N.J.A.R.2d (BRC) 71, 73; see also Sheeran v. Progressive Life Ins. Co., 182 N.J. Super. 237, 259 (App. Div. 1981) (citing Swede v. Clifton, 22 N.J. 303, 312 (1956) (when there is reasonable doubt as to whether an administrative agency has a particular power, the power should be denied).

In Howley v. Verizon New Jersey, Inc., PUC 03376-08, Initial Decision (June 24, 2008) <<http://lawlibrary.rutgers.edu/oal/search.shtml>>, a customer filed a petition against Verizon seeking to recover expenses she incurred while trying to move her services from Verizon to another provider, AT&T. At the time she disconnected service from Verizon she had an outstanding balance in the amount of \$457. After informing Verizon she wished to port her service to AT&T, there was a three-week delay before she was able to establish service with AT&T. She asked Verizon to pay her outstanding balance to compensate her for the delay. The judge held, "[a]s for the issue of

monetary damages, Ms. Howley has failed to connect the amount sought in her petition to any outstanding bill that was in dispute." The judge concluded that "based on the fact that this matter clearly goes beyond a mere billing dispute, and that the amount sought is for consequential damages, the OAL does not have jurisdiction to hear this issue."

Here, petitioner represents that the damages he seeks relate to funds he was required to expend to respond to actions taken by respondent and its contractors. He has not alleged that he was improperly billed by respondent or that the content of his bills is incorrect. Because petitioner seeks money damages, I **CONCLUDE** that his complaint must be dismissed as a matter of law. Petitioner may, of course, pursue any other remedies he may be entitled to as a matter of law in the appropriate forum.

ORDER

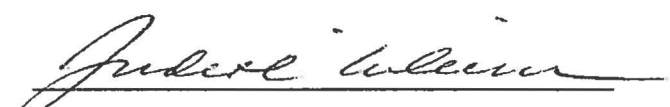
Respondent's motion for to dismiss is hereby **GRANTED** and the petition is hereby **DISMISSED**.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SECRETARY OF THE BOARD OF PUBLIC UTILITIES, 44 South Clinton Avenue, P.O. Box 350, Trenton, NJ 08625-0350**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

July 21, 2021
DATE


JUDITH LIEBERMAN, ALJ

Date Received at Agency: July 21, 2021

Date Mailed to Parties: July 21, 2021

mph

EXHIBITS

For petitioner:

Petitioner's Petition

For respondent:

Respondent's Answer to Petition